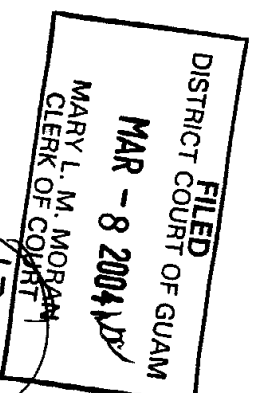


ORIGINAL

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IN THE UNITED STATES DISTRICT COURT

FOR THE

TERRITORY OF GUAM

CIVIL ACTION NO. 03-000038

SEAN FRANCIS SCHOOL
MAFNAS,

NOTICE OF MOTION AND MOTION TO
DISMISS WITHOUT LEAVE TO AMEND

Plaintiff,

FILED ON BEHALF OF DEFENDANTS

v.

MARIVIC P. DAVID AND MIKEL W. SCHWAB

JOHN S. UNPINGCO, et al.,)

Defendants.

NOTICE OF MOTION

PLEASE TAKE NOTICE that this motion is submitted without a
request for hearing for decision on the pleadings, at the
discretion of the court.

MOTION TO DISMISS WITHOUT LEAVE TO AMEND

NOW COMES Defendants Marivic P. David and Mikel W. Schwab, Assistant U.S. Attorneys for the U.S. Attorney's Office, Department of Justice for the District of Guam, through counsel, and respectfully move the Court to dismiss plaintiff's claims, pursuant to Rule 12(b) of the Federal Rules of Civil Procedure, on the following grounds. First, this Court lacks subject matter jurisdiction over plaintiff's purported claims against the defendants in their official capacities, which are barred by sovereign immunity, and therefore those claims should be dismissed pursuant to *Fed. R. Civ. P. 12(b)(1)* or *12(b)(6)*. Second, plaintiff's individual capacity claims against defendants are barred by the doctrine of absolute immunity for acts within the scope of their prosecutorial duties, and accordingly, those claims should be dismissed pursuant to *Fed. R. Civ. P. 12(b)(1)* or *12(b)(6)*. Third, the foundation for plaintiff's claims against the AUSAs is a misinterpretation and misapplication of 18 U.S.C. § 1332(a).

In short, taking the well-pleaded facts in the complaint as true for purposes of ascertaining their legal sufficiency, all of plaintiff's claims against defendants are subject to dismissal without leave to amend for the above reasons.

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1 In further support of this motion, the defendants rely upon
2 the Memorandum of Points and Authorities, which is being filed
3 concurrently with this motion.

4
5 Respectfully submitted,

6 ROBERT D. MCCALLUM, JR.
7 Assistant Attorney General

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19 First Assistant U.S. Attorney

20 Attorney for Defendants
21 Marivic P. David and Mikel W. Schwab
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing, has been
furnished, via regular first class U.S. mail, Certified postage
prepaid, this 8th day of March, 2004, to the following:

Sean Francis School Mafnas
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Pualanta, Yona
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FRANCES B. LEON GUERRERO
Legal Assistant